



UNITED STATES PATENT AND TRADEMARK OFFICE

68

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,853	02/28/2002	Manuela Javet	1964	7358

7590 02/25/2004

Striker Striker & Stenby
103 East Neck Road
Huntington, NY 11743

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
----------	--------------

1751

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 10/069,853	Applicant(s) JAVET ET AL.	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-7 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10, 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5, 6 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/30/2003</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the amendment filed on 12/16/2003
2 Applicant's election with traverse of Group I, claims 5-6 and 11-13 in Paper filed
12/16/2003 is acknowledged. Claims 7, 10 and 14-15 are withdrawn from further consideration
pursuant to 37 CFR 1.142(b), as being drawn to a nonelected claims, there being no allowable
generic or linking claim. Applicant timely traversed the restriction (election) requirement in
Paper No. 5, dated 10/31/2003.

The traversal is on the ground(s) that unity of invention exists between the claimed
inventions because there is a common technical relationship among the claimed inventions
involving one or more special technical features. This is not found persuasive because the steps
of treating keratin fibers by applying first a at least one physiologically compatible salts of
organic or inorganic acid and subsequently dyeing the keratin fibers with a dyeing agent are
considered a technical feature that not found in group II, which is drawn to a multi-compartment
kit comprising a hair treating composition without a technical feature of applying this
composition to the keratin fibers as shown in the method's claims. Therefore, the unity of
invention is not exists between the claimed invention.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
such that the subject matter as a whole would have been obvious at the time the invention was made to a person
having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the
manner in which the invention was made.

Claims 5-6 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1).

Dias (US' 791 B1) teaches a method for bleaching and coloring hair comprising the steps of applying to the hair a first component followed by applying a second component, wherein the first component comprises a composition that comprises alkalizing agents such as sodium citrate, sodium tartarate and sodium chloride (see col. 46, lines 55-67 and col. 54, claim 18), wherein the alkalizing agent presents in the amount of 0.1% to 15%, which is overlapped with the claimed range (see col. 7, line 41). The second component comprises a hair coloring component of anionic dyes such as acid yellow, C.I.-10,316 (D&C yellow No. 7) and (FD&C yellow No. 6) (see col. 41, lines 55-63). Dias also teaches that the composition can also be used as a pre-treatment step to additional coloring processes taking place in order to further enhance coloring performance or to create special and individualized coloring effects or to address specific needs of the consumer (see col. 49, lines 38-42). Dias further teaches that the composition can be applied as leave-on or as rinse-off in which case a residence time on the hair to be bleaching and/or dyeing is required from about 5 minutes to about 40 minutes (see col. 49, lines 44-46 and col. 50, lines 1-3). Although Dias generally discloses a method for dyeing hair that comprises applying to the hair first an alkaline composition followed by a coloring composition, the reference does not require such an alkaline composition that contains salts of organic or inorganic acids and a dyeing composition that contains anionic, direct dyes with sufficient specificity to constitute anticipation.

However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use such a method for applying the compositions as taught by Dias,

Art Unit: 1751

which contained alkalizing component of organic or inorganic acids and anionic, direct dyes, because such a hair dyeing compositions fall within the scope of those taught by Dias. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a hair dyeing compositions comprise alkaline salts of organic or inorganic acids that used as a pretreatment composition followed by a dyeing composition that comprises anionic direct dyes is expressly suggested by Dais's disclosure and therefore is an obvious formulations.

Conclusion

4 The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/069,853

Page 5

Art Unit: 1751



Eisa Elhilo
February 18, 2004



BRIAN P. MRUK

PRIMARY EXAMINER

TECH CENTER 1700